

CIVIL DOCKET
UNITED STATES DISTRICT COURT

8-6-69
 Jury demand date: ~~August 26, 1968~~ *waived*
11-12-69

D. C. Form No. 106A Rev.

| TITLE OF CASE | | ATTORNEYS | |
|---|--|---|--|
| <p>JACK W. KELLEY, ALFRED R. TANDY and WILLIAM H. MORRIS, individually and d/b/a a joint venture under the name of Bank Building Joint Venture</p> <p>vs</p> <p>BANK BUILDING AND EQUIPMENT CORPORATION OF AMERICA, a corporation</p> <p>and</p> <p>COMMERCIAL UNION INSURANCE COMPANY (added 11-26-68)</p> <p>Advance Glass Company, a corporation,</p> <p align="right">Third Party Defendant</p> | | <p>For plaintiff:</p> <p>John S. Carlson 1806 Fourth National Bank Bldg., Tulsa, Oklahoma 74119</p> <p>Hudson, Wheaton & Brett <i>Tom Brett</i> Franklin Building LU 2-8146 Tulsa, Oklahoma <i>4th Natl. Bldg.</i></p> <p>For defendant:</p> <p>Robert S. Rizley <i>(587-1128)</i> (Bank Bldg.) 1414 First National Bldg & Comm. Union Tulsa, Oklahoma</p> <p>Armstrong, Teasdale, Kramer & Vaughan 611 Olive Street St. Louis, Mo. 63101</p> <p>Gerard K. Donovan Petroleum Club Bldg. Tulsa, Oklahoma</p> <p>Harry M. Crowe, Jr. (Advance Glass) 11-3 Southland Financial Center 4111 South Darlington Tulsa, Oklahoma 74135</p> | |

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|--|--------------|--|---------|---------------------|-------|-------|
| J.S. 5 mailed <i>9-1-68</i> | Clerk | | 8-5-68 | Carlson | 15 00 | |
| | | | 8-7-68 | C/D No. 6 | | 15 00 |
| J.S. 6 mailed <i>4-1-70</i> | Marshal | | 3-18-70 | Brett | 5 00 | |
| | | | 3-19-70 | C/D 40 | | 5 00 |
| Basis of Action: Breach of contract | Docket fee | | | | | |
| | Witness fees | | | | | |
| Action arose at: Tulsa, Okla. | Depositions | | | | | |

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|----------|---|------------------------------|
| 8-5-68 | Complaint, filed. Summons issued. g | |
| 8-14-68 | Summons returned and filed - served Bank Building and Equipment Corporation by serving Corporation Company at Oklahoma City, Okla. on August 7, 1968. (Fee \$4.00) b | |
| 8-26-68 | Defendant, Bank Building and Equipment Corp. of America's Demand for Jury trial, filed. ds | |
| 8-26-68 | Defendant's answer, filed. ds | |
| 10-3-68 | Case set for pre-trial hearing on Thursday 10-10-68 at 1:30 P.M. (LB-J)h | |
| 10-9-68 | Case stricken from pre-trial assignment of 10-10-68. (LB-J)w | |
| 11-4-68 | Motion and brief to add additional party defendant, filed by plaintiff. ds | |
| 11-21-68 | Hearing on plaintiffs' motion to add additional party defendant, and it is ordered that motion is granted and plaintiffs to prepare order. (LB-J)m | |
| 11-26-68 | Order filed, that plaintiffs are permitted to file an amendment adding an additional party defendant, Commercial Union Insurance Co. and have summons issued and served. (LB-J) ds | |
| 11-26-68 | Summons issued. ds | |
| 11-26-68 | Amendment to complaint, filed by plaintiffs. ds | |
| 12-12-68 | Summons, returned and filed: served Bank Building and Equipment Corp. of America by serving Joe B. Hunt, Okla. State Insurance Commissioner, at Okla. City, Okla. on 12-6-68. (\$4.72)g | |
| 12-30-68 | Case set for pre-trial hearing Tuesday 1-14-69 at 1:30 p.m. (LB-J)m | |
| 1-7-69 | Case stricken from pre-trial assignment of 1-14-69. (LB-J)m | |
| 1-13-69 | Answer of Commercial Union Ins. Co. to Amendment to complaint, filed. m | |
| 2-13-69 | Case set for pre-trial Tuesday 3-4-69 at 9:30 a.m. (LB-J)m | |
| 2-28-69 | Motion of deft. Bank Bldg. & Equipment Corp. for leave to file third party petition, filed. m | |
| 2-28-69 | Brief in support of motion for leave to file third party petition, filed. m | |
| 3-4-69 | Case called for pre-trial hearing. Parties not represented and case is passed. (LB-J)m | |
| 3-19-69 | Subpoena duces tecum returned, filed - served Lamber Fielder at Tulsa, Okla., on March 19, 1969. (Fee \$2.00) b | |
| 3-26-69 | Interrogatories filed by plaintiffs.h | |
| 3-27-69 | Order, filed, that request of Gerard K. Donovan, attorney for Commercial Union Ins. Co. to withdraw as counsel is granted, and that Robert Rizley shall in future represent deft. Commercial Union Ins. Co. (LB-J)m | |
| 3-28-69 | Case set for pre-trial 4-9-69 at 9:30 a.m. (LB-J)m | |
| 4-8-69 | Objections of Defendant to Interrogatories of Plaintiff filed. h | |
| 4-8-69 | Brief in support of Objections of Defendant to Interrogatories of Plaintiff filed.h | |
| 4-9-69 | Case called for pre-trial hearing. Motion of deft. Bank Bldg. & Equipment Corp. for leave to file third party petition is granted, and order granting same signed and filed in open Court. Pre-trial hearing passed to next pre-trial docket. (LB-J)(FS-CSR)m | |
| 4-10-69 | Third party petition, filed. m Summons issued. | |
| 4-15-69 | Third-party summons, returned and filed: served Advance Glass Co. by serving Harry Crowe, Secretary, at Tulsa, Okla. 4-12-69. (USM - \$6.36)g | |
| 5-5-69 | Third Party deft. Advance Glass Company's motion to dismiss third party complaint for lack of jurisdiction, filed. m | |
| 5-5-69 | Brief in support of third party defendant's motion to dismiss, filed. m | |

(Continued on Page No. 3, Sheet No. 2)

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|----------|---|------------------------------|
| 5-13-69 | Ordered by the Court that the ruling on Third Party Defendant, Advance Glass Company's motion to dismiss third party complaint for lack of jurisdiction held in abeyance and Court will enter an order. Defendants granted until May 19, 1969 to file reply brief. Ruling on defendant Bank Building and Equipment Corporation's objections to interrogatories of plaintiff deferred and plaintiff to take depositions to answer questions asked in interrogatories. (Luther Bohanon - Judge) (FS-CSR) b | |
| 5-29-69 | Application of deft. and third-party pltf. for additional time to file reply brief, filed. m | |
| 5-29-69 | Order allowing deft. and third-party pltf. additional time to file reply brief until 6-2-69, filed. (LB-J)m | |
| 6-3-69 | Reply brief of deft. and third-party pltf. to third-party deft's brief in support of third-party deft's motion to dismiss third party complaint for lack of jurisdiction, filed. m | |
| 6-11-69 | Order that motion of third-party deft. Advance Glass Company to dismiss third party complaint for lack of jurisdiction is denied, filed. (LB-J)m | |
| 7-11-69 | Answer and counterclaim of third party deft. Advance Glass Company, with leave granted to file out of time, filed. (LB-J)m | |
| 7-17-69 | Ordered by the Court that this case is set for pre-trial on Monday, August 4, 1969 at 11:00 A. M. (Luther Bohanon - Judge) b | |
| 7-31-69 | Answer of Jack W. Kelley, et al, plaintiffs, to counterclaim of third party deft., Advance Glass Company, filed. m | |
| 8-4-69 | Pre-trial hearing held. Ordered that 5th cause of action be deleted from complaint. Pltf. to prepare pre-trial order within 10 days & trial brief within 20 days. Deft. to file answer brief 20 days thereafter. Est. trial time 2 days or more & case to be set on next jury docket. Ruling on deft. Bank Bldg. & Equipment Corp's objections to interrogatories of pltf. passed by agreement of counsel. (LB-J)m | |
| 8-6-69 | Defendant's demand for jury trial filed. ds | |
| 8-14-69 | Ordered by the Court that the time the plaintiff is to prepare pre-trial order is extended 10 days from its original due date. (Luther Bohannon - Judge) b | |
| 8-25-59 | Answer of Defendant Bank Bldg. and Equipment Corporation to Counterclaim of Third Party Defendant filed. h | |
| 8-26-69 | Case set for jury trial Tuesday 10-28-69 at 9:30 a.m. (LB-J)m | |
| 9-3-69 | Ordered that parties are granted an extension of time until 9-13-69 within which to file pre-trial order, and the filing of briefs is extended to the same period. (LB-J)m | |
| 9-3-69 | Amendment to answer of Jack W. Kelley, et al, plaintiffs, to counterclaim of 3rd party defendant, Advance Glass Company, filed. ds | |
| 9-29-69 | Pre-trial order, filed. (LB-J)m | |
| 9-29-69 | Pre-trial brief of plaintiffs, filed. m | |
| 10-1-69 | Case stricken from jury docket of 10-28-69. (LB-J) m | |
| 11-12-69 | Stipulation waiving trial by jury, filed. ds | |
| 11-12-69 | Pre-trial brief of deft. Bank Bldg. & Equipment Corp. of America, filed. m | |
| 12-11-69 | Trial memorandum of Third Party Deft. Advance Glass Company, filed. m | |
| 12-11-69 | It is ordered by the court that this case is set for non-jury trial on Wednesday, January 7, 1970, at 1:30 P.M. (LB-J) ds | |
| 12-15-69 | Notice to take deposition of Jack W. Kelley on 12-18-69, filed. Subpoena issued. g | |
| 12-17-69 | Return on deposition subpoena filed. Served Jack W. Kelley on 12-16-69. ds | |
| 1-2-70 | Deposition of Eugene O'Neill, taken on behalf of the plaintiffs at (Continued on Page No. 4, Sheet No. 2) | |

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|---------|--|------------------------------|
| 1-5-70 | Southard, Oklahoma on Dec. 19, 1969. (fee \$76.25 pd by pltf.) b Deposition of Jack W. Kelley taken on behalf of deft. & third party ptf. Bank Building on 12-18-69, filed. (Fees: \$126.00 pd. by deft.)m | |
| 1-5-70 | Deposition of Gerald Brown, on behalf of plaintiff, filed. (\$49.00)g | |
| 1-6-70 | Deposition of Edmond Limke xxxxxxKelliey , filed. (Fees: \$73.00 pd. by Kelley, Morris & Tandy)m | |
| 1-9-70 | Plaintiffs subpoenas returned and filed: Edmund Limke, not found, Served Warren H. Hendershot, Dennis Steig, and Ed Lineker, Bob Coley, Bill Hamilton, William C. Phelps, Margaret Mitchell, Edward A. Herhold, and Gail R. Runnels. (Fee \$26.16) e | |
| 1-9-70 | Defendants subpoena returned and filed: Richard R. Klein, not served. (Fee 13.20) e | |
| 1-7-70 | Case tried to the Court Jan. 7, 8 and 9, 1970. Parties present and represented. Case passed to 1-22-70 at 9:30 a.m. for oral arguments and third-party deft's testimony. Parties granted 10 days for statement and F/F and C/L. (LB-J)h | |
| 1-19-70 | Trial Brief of plaintiffs, filed. b | |
| 1-19-70 | Plaintiffs' suggested Findings of Fact and Conclusions of Law, filed.b | |
| 1-22-70 | Brief of deft. Bank Bldg. & Equipment Corp. of America, filed. m | |
| 1-22-70 | Deft's proposed F/F & C/L, filed. m | |
| 1-22-70 | Case called for oral arguments and further testimony. It is ordered by the Court that ptf. is entitled to no recovery from deft. on any of Cts. 1 thru 4, and that Advance Glass Co. is entitled to recover \$13,846.87 from ptf. on counter claim. Deft. to prepare proposed F/F and C/L. Ptf. given 15 days to file objections to F/F and Court will then enter final F/F & C/L and Judgment. (LB-J)m | |
| 1-22-70 | Trial exhibits of ptf, deft & third-party deft, filed.1 | |
| 12-5-69 | Notice of taking depositions of Jack W. Kelley on Dec. 12, 1969 at 11:00 A.M. at Tulsa, Oklahoma filed, by defendants. h | |
| 2-2-70 | Transcript of Court's comment and decision, Jan. 22, 1970, filed. g (Frank Sickles, CSR) | |
| 2-3-70 | Defendants' proposed findings of fact and conclusion of law, filed.m | |
| 2-6-70 | Third-party deft's proposed F/F, C/L and Judgment, filed. m | |
| 2-17-70 | Ptfs' objections to proposed F/F and C/L of defts, filed. m | |
| 2-17-70 | Ptfs' objections to proposed F/F and C/L and Judgment of Third- party deft, filed. m | |
| 3-9-70 | Findings of fact and conclusions of law as between plaintiffs and deft. Bank Bldg. & Equipment Corp. of America, filed. (LB-J)m (copies mailed counsel) | |
| 3-9-70 | Judgment, filed and entered, that ptfs take nothing & judgment rendered in favor of deft. Bank Bldg. & Equipment Corp. of America, together with its costs. (LB-J)m (copies mailed counsel) | |
| 3-9-70 | Findings of Fact and Conclusions of Law (as to 3rd-party deft.), filed. (LB-J)m (copies mailed counsel) | |
| 3-9-70 | Judgment, filed and entered, that third party deft. Advance Glass Co. have judgment against deft. Bank Bldg. & Equipment Corp. of America and the ptfs Jack W. Kelley, Alfred R. Tandy & William H. Morris, d/b/a Bank Bldg. Joint Venture in the sum of \$13,846.87; that third party deft. Advance Glass Co. have a lien upon the sum of \$13,846.87 on deposit in the registry of the Clerk of Dist. Ct. of Tulsa County, in Cause No. 11,673, pending in said Court; that upon this judgment becoming final, the Clerk of Tulsa County Dist. Ct. pay to third party deft. Advance Glass Co. from the fund on deposit in the registry of the Clerk of said Dist. Ct. the sum of \$13,846.87; and that the judgment shall earn int. at rate of 10% per annum from 3-6-70, the same to be pd. out of deposit made with the Clerk of Dist. Ct. of (over) | |

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|----------|---|------------------------------|
| | Tulsa County, until paid. (LB-J)m (copies mailed counsel) | |
| 3-17-70 | Notice of appeal by plaintiffs, filed. cpy to USCA, Rizley & Crowe. g | |
| 3-17-70 | Bond for costs on appeal, filed. (\$250.00 - Travelers Indemnity Co.)g | |
| 3-19-70 | Motion of defendant, Bank Building and Equipment Corporation to amend court's findings of fact made with respect to the cross-claim of Advance Glass Company, filed. g | |
| 3-19-70 | Brief in support of motion to amend findings of fact, filed. g | |
| 4-9-70 | Hearing held on motion of deft. Bank Building and Equipment Corp, to amend Court's findings of fact made with respect to the cross-claim of Advance Glass Co. Motion sustained and counsel for deft. Bank Bldg. to prepare order. (LB-J)m | |
| 4-24-70 | Order extending time to file and docket appeal to 6-15-70, filed. (LB-J)m (copies mailed USCA, Brett, Rizley & Crowe) | |
| 4-27-70 | Order sustaining in part the motion of deft. Bank Bldg. to amend the Court's F/F made with respect to the cross-claim of Advance Glass Company, filed. (LB-J)m (copies mailed) | |
| 4-27-70 | Amended F/F and C/L, filed. (LB-J)m (copies mailed) | |
| 4-27-70 | Amended judgment, filed and entered, that thirdparty deft. Advance Glass Co. have judgment against deft. Bank Bldg. & Equipment Corp. of Amer. & pltfs Jack W. Kelley, Alfred R. Tandy & William H. Morris d/b/a Bank Bldg. Joint Venture in sum of \$13,846.87; that deft. Bank Bldg. have judgment against pltfs. Jack W. Kelley, Alfred R. Tandy and William H. Morris d/b/a Bank Bldg. Joint Venture in sum of \$13,846.87; that Advance Glass Co. have a lien upon sum of \$13,846.87 on deposit in registry of Clerk of Dist. Ct. of Tulsa County; and that upon said judgment becoming final, Clerk of said Court shall pay to Advance Glass Co. from the fund on deposit in said Dist. Ct. the sum of \$13,846.87. (LB-J)m (copies mailed)m | |
| 6-5-70 | Partial release of judgment as to Lot (Five) 5, Block Two (2), Bolewood Acres Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma filed by Advance Glass Company and Bank Building & Equipment Corp. of America, filed. b | |
| 6-10-70 | Court Reporter's transcript of trial proceedings (3 volumes), filed. (Frank Sickles, Rptr.)g | |
| 6-15-70 | Appeal record (8 volumes) forwarded to USCA. g | |
| 7-17-70 | Transcript of Pre-trial conference (Pages 1 - 33 incl) filed. v | |
| 7-17-70 | Transcript of Proceedings re claim of third party deft Advance Glass Company (exclusive of arguments) Pages 1 - 77 incl., filed. v | |
| 11-12-70 | Supersedeas bond of Jack W. Kelley in the amt. of \$13,846.87, filed.m | |
| 11-12-70 | Partial release of judgment as to N $\frac{1}{2}$ of NW $\frac{1}{4}$ T. 18, N., 13 E., (Sec 12., filed. b SW | |
| 11-16-70 | Partial release of judgment as to N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 12, T.18N, R13E, filed. m | |
| 2-1-72 | Mandate & Opinion of USCA, 10th Circuit, affirming judgment of 3-9-70 and amended 4-27-70, filed and spread of record. g | |
| 4-18-72 | Satisfaction and release of judgment, filed. hm | |

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
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